

**CORRESPONDENCE
FILE**

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FLORIDA CABLE
TELECOMMUNICATIONS ASSOCIATION,
INC., COX COMMUNICATIONS GULF
COAST, L.L.C., et. al.

Complainants,

v.

GULF POWER COMPANY,

Respondent.

DOCKET FILE COPY ORIGINAL

E.B. Docket No. 04-381

**GULF POWER'S SECOND SUPPLEMENTAL RESPONSES TO
COMPLAINANTS' FIRST SET OF INTERROGATORIES**

Gulf Power Company ("Gulf Power") supplements its first supplemental responses to complainants' First Set of Interrogatories, in accordance with the Presiding Judge's September 21, 2005 Discovery Order, as follows:

GENERAL RESPONSES AND OBJECTIONS

1. Gulf Power adopts and incorporates its responses and objections to complainants' first set of interrogatories, as if fully set forth herein.
2. Gulf Power adopts and incorporates its response to complainants' second motion to compel as if fully set forth herein.
3. The responses and objections herein supplement and/or amend Gulf Power's April 18, 2005 responses and objections.

SPECIFIC RESPONSES AND OBJECTIONS

8. For all of the poles that you identified in response to Interrogatories 4 and 5, identify every attaching entity other than Complainants attached to each such pole; describe how many attachments on each such pole those other attaching entities have had or have, when such attachments commenced, and where those attachments are located on each pole; and state the make-ready and annual per-

pole compensation received by Gulf Power from each attaching entity other than Complainants (including any Gulf Power affiliates). Specifically identify the number of attaching entities paying Gulf Power annual compensation under the FCC's telecommunications rate formula (47 U.S.C. § 224(e) and implementing regulations).

ORIGINAL RESPONSE:

Gulf Power will supplement this response upon completion of the Osmose audit.

SUPPLEMENTAL RESPONSE:

The August 4, 2005 Discovery Order requires Gulf Power to "provide information that it currently possess[es] about users, make-ready costs, and per pole compensation." (Discovery Order, p. 5). In its original response to interrogatory number 16, Gulf Power identified every attacher since 1998 and produced attachment agreements for each attacher. The agreement sets forth the annual rental paid by each attacher. Further, Gulf Power already produced its make-ready documents during the May 27-28, 2005 document review. These make-ready documents include work orders with itemized make-ready costs.

SECOND SUPPLEMENTAL RESPONSE:

Gulf Power is unclear as to what additional information, if any, it is being ordered to provide. The Second Discovery Order says, "Gulf Power must identify the number of Complainants' CATV attachments on Gulf Power's poles, and provide information on when such attachments were connected, where located, and amounts of related compensation received by Gulf Power." (Second Discovery Order, p. 6). Gulf Power already identified the number of complainants' attachments on its poles. (See Gulf Power's Original Response to Interrogatory No. 1). Gulf Power provided business records which identified when such attachments were made, in the form of permits organized by attacher (these were on the cart of documents made available in the first floor conference room of Gulf Power's headquarters).¹ With respect to "where" attachments are located, the best information available to answer this question is the description of geographic scope at the end of each attachment agreement.² The "compensation received by Gulf Power" in connection with make-ready performed upon complainants request can be found in the make ready work orders, which are organized chronologically and by permit number. By way of example, if Mediacom wanted to find out (from the documents Gulf Power has produced) what amounts it paid Gulf Power in make-ready for any particular year (other than looking at its own records), it would first

¹ This is the best information Gulf Power would have as to "when" a complainant attached. This assumes, of course, that complainants follow the permitting procedure, which is not always the case. Sometimes, complainants just get on the pole at their own leisure. In these instances, Gulf does not know they are even attached, let alone when they attached.

² The oddity of this interrogatory is that Gulf Power is being forced to tell the complainants where complainants themselves are.

look at the permit log for that year and determine which permits required make ready. Gulf Power's permit logs (organized chronologically, by district) for years 1999 through 2002 were produced as Bates labeled documents Gulf Power 2310 - 2404. Permits that require make ready are assigned a "DSO" (Distribution Service Order), the number for which appears in the permit log. For those permits that required make ready, Mediacom could then go to a specific file drawer at a specific Engineering & Construction office and pull a specific file based on the DSO number. This file will contain the make ready work orders which reflect the cost of make ready.³ The permit themselves also identify the cost of make-ready associated with such permit.

20. Identify and describe, for each cable operator Complainants, the number of Gulf Power poles that have been changed out from 1998 to the present in order to accommodate attachments of Complainants, the location of any such change-outs, the reasons for each change-out, and identify any and each instance in which Gulf Power was not reimbursed by Complainants for the costs of such change-outs.

ORIGINAL RESPONSE:

Gulf Power objects to this interrogatory on the grounds that it overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and seeks information which is not relevant to the hearing issues. To the extent the information sought is discoverable, it is the subject of other interrogatory responses and Gulf Power's responses to complainants' request for production.

SUPPLEMENTAL RESPONSE:

The information requested is contained within the make-ready documents produced during the May 27-28, 2005 document review. Further, to the extent this interrogatory seeks information regarding change-outs at the request of complainants, complainants themselves should have this information.

³ Gulf Power does not believe the level of "how to" provided in this response is required by Fed. R. Civ. P. 33(d). Gulf Power's previous response specifically identified "make ready documents" as the documents from which the response to this interrogatory could be "derived or ascertained" with "substantially the same [burden] for the [complainants] as for [Gulf Power]." Fed. R. Civ. P. 33(d). The situation before this Court is highly distinguishable from the Allianz and Herdlein cases cited in the Second Discovery Order. In Allianz, the party responding to interrogatories said merely "information responsive to this request was previously provided as part of the Fed. R. Civ. P. 26 disclosures." Allianz Ins. Co. v. Surface Specialties, Inc., 2005 WL 44534, *3 (D. Kan. Jan. 7, 2005). In Herdlein, the responding party "merely stated the information is available from documents that it has produced already pursuant to an unspecified document request." Herdlein Technologies, Inc. v. Century Contractors, Inc., 147 F.R.D. 103, 105 (W.D. N.C. 1993). This is not at all what has happened here. Make ready work orders are specific documents. Both parties understand what is meant by "make ready work orders." The fact that complainants are asking Gulf Power to identify a vast number of documents necessarily results in a seemingly vast response. But this is not a situation where Gulf Power is telling complainants to find a "needle in a haystack." Complainants are asking for the entire haystack.

SECOND SUPPLEMENTAL RESPONSE:

The documents from which the response to this interrogatory could be “derived or ascertained” with “substantially the same [burden] for the [complainants] as for [Gulf Power]” are the make ready work orders prepared at complainants’ request. Fed. R. Civ. P. 33(d). These specific make ready work orders can be located by cross referencing the permit log and DSO number, with the DSO numbers in the make ready files (organized chronologically by year). These documents are kept in Gulf Power’s Engineering and Construction offices. These make ready work orders provide the locations of change outs and reasons for change outs (as best as “reasons” are tracked day to day in the field). Gulf Power is not contending in this proceeding that complainants have failed to pay any specific make ready invoice. The Second Discovery Order states, “[t]he ‘make ready’ documents must be related to specific poles that are identified/indicated as being at ‘full capacity.’” (Second Discovery Order, p. 7). But this is a redundancy because Gulf Power contends (and has set forth its contention in multiple prior submissions) that all poles which required make ready before complainants could attach were at “full capacity.”

25. Describe and explain the steps and procedures involved in changing-out a pole, from a prospective attacher’s request (or Gulf Power’s own core electricity need) to completion (i.e., including processing, procurement, placement and transfer of existing facilities and equipment, including estimated time periods).

ORIGINAL RESPONSE:

Gulf Power objects to this interrogatory on the grounds that it overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and seeks information which is not relevant to the hearing issues.

SUPPLEMENTAL RESPONSE:

See Bates labeled documents Gulf Power 02421 - 02425, enclosed herewith.

SECOND SUPPLEMENTAL RESPONSE:

In its supplemental responses, Gulf Power referenced Bates labeled documents Gulf Power 02421-02425 as providing the information responsive to this interrogatory. The Second Discovery Order rules that “Gulf Power still has not given a full response.” (Second Discovery Order, p. 7). If interpreted literally, this interrogatory would require almost infinite detail. For this reason, Gulf Power suggested in its response to complainants’ second motion to compel that further detail regarding the change out process might best be gleaned from “the September 14-16, 2005 depositions in Pensacola.” (Response to Second Motion to Compel, p. 8). Complainants obliged and this topic was discussed at length in the deposition of Ben Bowen (September 14-15,

2005). Gulf Power further supplements its response as follows:⁴ Once a permit is issued, payment is made, and the necessary DSO is released to the line department (all of which is addressed in the document produced as Gulf Power 02421-02425 and marked as complainants' Exhibit 5 to the deposition of Ben Bowen), the line crews then obtain the specified pole from inventory and set the pole as soon as resources allow (this process is sometimes slowed by the FCC's "60 day rule"). 47 C.F.R. § 1.1403(c)(3). After the pole is set, Gulf Power then transfers its facilities to the new pole, and cuts-out the top of the old pole (to allow subsequent transfer of communications attachments). Gulf Power then notifies (usually through NJUNS) the next attacher of its "turn" to transfer. The first attachment to transfer is the highest on the pole, and attachments are transferred in that order until transfer of all attachments is complete. When this process is complete, Gulf Power removes the old pole. The time period during which this process takes place varies depending on a variety of circumstances, including but not limited to the FCC's "60 day rule," the availability of Gulf Power's resources, the availability of each attacher's resources, the weather, customer needs, and the efficiencies in communication between the parties.

34. Does Gulf Power routinely inform prospective and existing attachers when it reserves pole space for future use for its core electricity operations, and if so, identify and describe all such reservations and notifications to attachers, including Complainants, since 1998.

ORIGINAL RESPONSE:

Yes. Prospective attachers are shown and/or given a copy of Gulf Power's "spec plate" prior to attaching.

SUPPLEMENTAL RESPONSE:

The "spec plate" identified in Gulf Power's original response is the only written reservation/notification routinely given to prospective attachers regarding reserved space. Gulf Power field employees will, from time to time, advise attacher field employees of potential/impending future uses.

SECOND SUPPLEMENTAL RESPONSE:

Gulf Power is unclear as to what additional information it is being ordered provide. This interrogatory asks two questions. The first is a "yes" or "no" question which Gulf Power has answered "yes." Gulf Power assumes this is not the subject of the Second Discovery Order. The second question asks Gulf Power to "identify and describe all such reservations and notifications to attachers, including Complainants, since 1998." Gulf Power responded to this question by referencing the "spec plates" attached to every

⁴ Fed. R. Civ. P. 26(b)(2) states that discovery "shall be limited by the court" if "the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive." (Emphasis added).

attachment agreement, which designates the electric supply space on each pole, according to pole height (See, in particular, plate C-11). Moreover, Gulf Power already said this is the "only written reservation/notification routinely given to prospective attachers regarding reserved space."⁵ Gulf Power has no other further information to provide.

46. Identify the pole attachment rental rates paid by Gulf Power to other joint users pole owners, the specific amount of pole space leased by Gulf Power from such joint users, and explain the methodologies, if any, used to calculate these rates.

ORIGINAL RESPONSE:

Gulf Power Company Pole Space Leased from JEEC			
Company:	30' Poles	35' Poles	40' Poles
BellSouth Telecommunications Inc.	2'-0"	6'-0"	8'-6"
Sprint-Florida, Inc.	Not specified	6'-0"	8'-6"
GTC, Inc.	Not specified	6'-0"	8'-6"

SUPPLEMENTAL RESPONSE:

None.

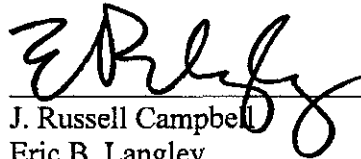
SECOND SUPPLEMENTAL RESPONSE:

The "pole attachment rental rates" paid by Gulf Power to other joint use pole owners are the same as the "rental rates" paid by joint users to Gulf Power (which are set forth in response to interrogatory number 45). The adjustment process (in other words, how it is determined who owes who what on an annual basis), which is based on relative pole ownership, is explained in detail in the joint use agreements. For the Sprint adjustment process, see the joint use agreement produced as Gulf Power 2113 - 2131 (also marked as Exhibit 14 to the deposition of Ben Bowen), specifically Article IX at pp. 8-10 (Bates labeled pages 2122 - 2124). For the Bellsouth adjustment process, see the joint use agreement produced as Gulf Power 2089-2112 (also marked as Exhibit 8 to the deposition of Ben Bowen), specifically Article IX at pp. 12-14 (Bates labeled pages 2100-2102). For the GTC adjustment process, see the joint use agreement produced as Gulf Power 2132 - 2148, specifically Article IX at pp. 8-9 (Bates labeled pages 2141-2142).

⁵ Complainants take issue with the fact that this response "says nothing about any reservations or notifications given to existing attachers." (Second Motion to Compel, p. 17). But the spec plates are in the attachment agreement, which covers both existing and prospective attachments.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Second Supplemental Responses To Complainants' First Set Of Interrogatories has been served upon the following by Electronic Mail and by United States Mail on this the 30th day of September, 2005:

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